No. 80-250

Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,
Petitioner,

vs.

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARD and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION; McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, ATTORNEYS AT LAW, Jointly, Severally, and Individually; ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, ATTORNEYS AT LAW, Jointly, Severally and Individually; FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE; MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, Jointly, Severally and Individually,
Respondents.

MEMORANDUM OPPOSING CERTIORARI

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Insofar as Respondent Counard is concerned, this is a legal malpractice action which Petitioner had filed, first in state court, and later in federal court. Petitioner designated the within federal action as a "removed" action, although she was not a defendant (13a). No federal civil rights allegations against Counard were ever raised (61a-65a). Respondent Counard moved to remand the case to be joined and consolidated with the identical state court actions, which had been previously filed against him, in the Circuit Court for the County of Wayne (sitting in Detroit, Michigan), and in the Michigan Supreme Court (203a). After argument, the United States District Court for the Eastern District of Michigan granted this Motion for several, well-articulated reasons (452a-453a). An appropriate Order of Remand was entered (454a).

Petitioner filed a Notice of Appeal (455a). Respondent Counard filed a Motion to Dismiss this appeal (463a-465a). On May 5, 1980, the United States Court of Appeals for the Sixth Circuit dismissed the appeal as to Counard insofar as the appeal of the Order of Remand was concerned (554a).

Inasmuch as Petitioner filed the within federal action as a "removed" action, to the extent that such action below was so filed by her, 28 USC §1447(d) would seem to bar any appellate review as to the Order of Remand. If Petitioner's action was incorrectly denominated by her as a "removal", as seems now to be her theory, the substance of the trial court ruling was nevertheless patently correct since Petitioner and Defendant Counard, both Michigan citizens, were not diverse pursuant to 28 USC §1332 and dismissal for a lack of jurisdiction was also in order since Petitioner claimed no federal action aginst Counard.

Finally, the mortgage foreclosure which Petitioner contends Respondent Counard allegedly mishandled was sustained by the Michigan Supreme Court, and this Court subsequently refused to review the matter. *Cramer v Metropolitan Savings & Loan Ass'n*, 401 Mich 252, 258 NW2d 20, *reh den* 402 Mich 954, 960 (1977), *cert den* 436 US 958, 98 S.Ct. 3072, 57 L.Ed.2d 1123.

Certiorari should be denied.

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